(2025) 12 P&H CK 0018

Punjab And Haryana HC

Case No: Civil Writ Petition No. 13740 Of 2004 (O&M)

Dhan Raj		APPELLANT
	Vs	
State Of Haryana And Others		RESPONDENT

Date of Decision: Dec. 4, 2025

Acts Referred:

- Constitution Of India, 1950-Article 226, 227

Hon'ble Judges: Jagmohan Bansal, J

Bench: Single Bench

Advocate: Samrat Malik, Abhinav Kali

Final Decision: Dismissed

Judgement

Jagmohan Bansal, J

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 28.07.2003 whereby he was dismissed from service.

2. The petitioner was recruited as Constable on 25.11.2000. He was charge-sheeted on account of attack on two undertrial prisoners who were in the custody of petitioner and two other Police Officials. One prisoner in the attack was killed and second was injured. The Inquiry Officer found him guilty. The Disciplinary Authority called upon him to show cause as to why he should not be dismissed from service. He filed reply to said show cause notice. The Disciplinary Authority vide order dated 28.07.2003 dismissed him from service. He preferred an appeal which came to be dismissed. He further unsuccessfully preferred revision.

3. Learned counsel representing the petitioner submits that petitioner was not responsible for attack on two under trial prisoners.

There was no cowardness on his part. He was not allotted carbine, thus, there was no occasion for him to fire at assailants who attacked upon undertrial prisoners.

4. PER CONTRA, learned State counsel submits that petitioner was possessing carbine at the time of alleged incident. He did not fire and assailants succeeded in escaping from the spot. One undertrial prisoner was killed in the incident and another was seriously injured.

5. I have heard learned counsel for the parties and perused the record with their able assistance.

6. Scope of interference while exercising jurisdiction under Articles 226/227 of the Constitution of India in disciplinary proceedings is very limited. The Court has no power to look into quantum of sentence/punishment unless and until Court finds that sentence awarded is disproportionate to alleged offence. It is further settled proposition of law that High Court while exercising its jurisdiction under Article 226 of Constitution of India can look into the procedure followed by authorities. In case, it is found that enquiry officer or disciplinary authority has not considered any evidence on record or misread the evidence or procedure as prescribed by law has not been followed, the Court can interfere. A two judge Bench of Hon'ble Supreme Court in ‘Union of India and others vs. Subrata Nath’, 2022 SCC OnLine SC 1617 while adverting to scope of interference under Article 226 of the Constitution of India in disciplinary proceedings has held that departmental authorities are fact finding authorities. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct.

7. A Constitution Bench in ‘Syed Yakoob Vs K.S. Radhakrishnan’, AIR 1964 SC 477 and a two judge bench of the Hon’ble Supreme ‘Court recently in Central Council for Research in Ayurvedic Sciences and another Vs Bikartan Das and others’, 2023 SCC Online SC 996 have reminded us that there are two cardinal principles of law governing issuance of writ of certiorari under Article 226 of the Constitution of India i.e. (i) High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record; (ii) in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.

8. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals. Error of jurisdiction includes order by inferior court or tribunal without jurisdiction or in excess of it or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of

natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, High Court must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 of the Constitution to issue a writ of certiorari can be legitimately exercised.

9. In the instant case, the petitioner was found guilty by Inquiry Officer. The authorities duly followed prescribed procedure. The Authorities have recorded factual findings and there is no material irregularity or infirmity warranting interference. The petitioner was found guilty for inaction. One prisoner was murdered and another injured who were in the safe custody of petitioner. He did not even try to open gunfire at assailants.

10. There is another aspect of the matter. The impugned order of dismissal from service was passed in 2003. A period of 22 years has passed away. There seems no reason to reinstate petitioner at this belated stage.

11. In the wake of aforesaid discussion and findings, the instant petition deserves to be dismissed and accordingly dismissed.

12. Pending application(s), if any, shall also stand disposed of.